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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 MICHAEL GONZALES,

12 Plaintiff,

13 v.

14 HARMON, *et al.*,

15 Defendants.
16

Case No. 1:21-cv-00796-BAM (PC)

ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*

(ECF No. 4)

ORDER DIRECTING PAYMENT OF
INMATE FILING FEE BY CALIFORNIA
DEPARTMENT OF CORRECTIONS

17 Plaintiff Michael Gonzales (“Plaintiff”) is appearing *pro se* in this civil rights action
18 pursuant to 42 U.S.C. § 1983. On July 6, 2021, Plaintiff filed a motion to proceed *in forma*
19 *pauperis* pursuant to 28 U.S.C. § 1915, and on July 8, 2021 filed a certified trust account
20 statement. (ECF Nos. 4, 6.)

21 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event shall a
22 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
23 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
24 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
25 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
26 physical injury.”¹

27 ¹ The Court takes judicial notice of the following United States District Court Cases: (1) *Gonzales v. Galaza*,
28 Case No. 1:00-cv-06028-AWI-HGB (PC) (E.D. Cal.) (dismissed June 15, 2001 for failure to state a claim upon
which relief may be granted); (2) *Gonzales v. Gadsen*, Case No. 1:04-cv-05491-OWW-LJO (PC) (E.D. Cal.)

1 However, upon review of Plaintiff's complaint, the Court finds that his allegations appear
2 to satisfy the imminent danger exception to section 1915(g), at the time the complaint was filed.
3 *Andrews v. Cervantes*, 493 F.3d 1047, 1053–55 (9th Cir. 2007).²

4 Plaintiff has made the showing required by § 1915(a) and accordingly, the request to
5 proceed *in forma pauperis* will be granted. Plaintiff is obligated to pay the statutory filing fee of
6 \$350.00 for this action. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments
7 in the amount of twenty percent (20%) of the preceding month's income credited to Plaintiff's
8 trust account. The California Department of Corrections is required to send to the Clerk of the
9 Court payments from Plaintiff's trust account each time the amount in the account exceeds
10 \$10.00, until the statutory filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 4) is GRANTED;
- 13 2. **The Director of the California Department of Corrections or his or her**
14 **designee shall collect payments from Plaintiff's prison trust account in an amount**
15 **equal to twenty per cent (20%) of the preceding month's income credited to the**
16 **prisoner's trust account and shall forward those payments to the Clerk of the Court**
17 **each time the amount in the account exceeds \$10.00, in accordance with 28 U.S.C.**
18 **§ 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the Clerk of**
19 **the Court. The payments shall be clearly identified by the name and number**
20 **assigned to this action;**

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23 (dismissed Dec. 11, 2006 for failure to state a claim upon which relief may be granted); (3) *Gonzales v. Yamat*, Case
24 No. 1:05-cv-00550-AWI-DLB (PC) (E.D. Cal.) (dismissed August 15, 2008 for failure to state a claim upon which
25 relief may be granted and failure to obey a court order); (4) *Gonzales v. Vikjord*, Case No. 1:06-cv-01568-OWW-
26 WMW (PC) (E.D. Cal.) (dismissed July 8, 2008 for failure to state a claim upon which relief may be granted);
27 (5) *Gonzales v. Fresura*, Case No. 1:07-cv-00565-OWW-GSA (PC) (E.D. Cal.) (dismissed April 24, 2009 for failure
28 to state a claim upon which relief may be granted); and (6) *Gonzales v. Price*, Case No. 1:07-cv-01391-AWI-GBC
(PC) (E.D. Cal.) (dismissed March 12, 2012 as frivolous).

2 In the complaint, Plaintiff alleges that Defendants Harmon, John Doe, and Hernandez are retaliating against
him for assaults committed on staff while Plaintiff was housed at other institutions. Plaintiff alleges that Defendants
are setting Plaintiff up to be assaulted by 2-5er prison gang members and his requests to be moved away from a unit
with 2-5er gang members were ignored. (ECF No. 1.) At this time, the Court expresses no opinion on the merits of
Plaintiff's claims.

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3. The Clerk of the Court is directed to serve a copy of this order and a copy of Plaintiff's *in forma pauperis* application on Director of the California Department of Corrections, via the Court's electronic case filing system (CM/ECF); and

4. The Clerk of the Court is directed to serve a copy of this order on the Financial Department, U.S. District Court, Eastern District of California.

IT IS SO ORDERED.

Dated: July 12, 2021

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE